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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement submitted by Habitat International Coalition and the Lutheran World Federation, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 July 1999]

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Human rights as the primary objective of international trade investment and finance policy and practice

Introduction

1. The Lutheran World Federation, Habitat International Coalition and the International NGO Committee on Human Rights in Trade and Investment welcome Sub-Commission resolution 1998/12, which called for a working paper to be prepared on "ways and means by which the primacy of human rights norms and standards could be better reflected in, and could better inform, internati nal and regional trade, investment and financial policies, agreements and practices, and how the United Nations human rights bodies and mechanisms could play a central role in this regard", including "an analysis of the Multilateral Agreement on Investment (MAI) from a human rights perspective, and [consideration of] ways to ensure that future negotiations on the Agreement or analogous agreements or measures take place within a human rights framework". We have high hopes that the resulting working paper will provide a secure foundation for leadership by the Sub-Commission in this critical discussion. It presents a pivotal opportunity for presenting a comprehensive conceptual framework for an ongoing process of study and reflection.

Key premises

2. Our position is based upon a number of key premises. Although these principles are frequently acknowledged at a rhetorical level, we believe that it is necessary to forcefully restate them and to insist upon their practical consequences.

The human rights and fundamental freedoms set out in the major human rights instruments are a comprehensive catalogue of the elements of human dignity and well-being. Taken together, they constitute a universally acceptable definition of the notion of human dignity and well-being.

These rights and freedoms have, by and large, the status of international law and are binding upon States.

The promotion and protection of human rights is the first responsibility of Governments, and may not be subordinated to other priorities.

Economic liberalization is not an end in itself, or a pure good. It only has value if and to the extent that it serves to promote human dignity and well-being.

Any economic policy or practice which benefits a small minority at the expense of the majority does not promote human dignity and well-being, and is contrary to the principles of human rights and fundamental freedoms.

Growth and development do not automatically bring about a reduction in inequality. Whilst current international economic policies and practices have resulted in significant wealth creation, they have also

presided over a demonstrably widening gap between rich and poor nations and people. The wealth created by these policies and practices has not "trickled down" to the majority of humanity, and marginalized and vulnerable groups and communities have seen their marginalization and vulnerability increase, rather than decrease, in the era of economic liberalization.

Accordingly, the policies and practices of economic liberalization need to be more deliberately tested against, and guided by, the legal obligations contained in the international human rights instruments.

4. These premises also undergird the policy statement of the International NGO Committee on Human Rights in Trade and Investment issued in September 1998, and in particular the four fundamental human rights principles put forward in that policy statement as guiding principles against which economic policy needs to be judged and as a basis towards devising ways and means for the realization of human rights in the current economic context - the primacy of human rights, non-retrogression, the right to an effective remedy in the appropriate forum, and the rights of participation and recourse of affected individuals and groups.

Rethinking economic policy

5. Recent international economic turmoil has obliged economic policy makers to reassess the processes of "globalization" and to consider ways in which to ameliorate the harsh rule of the market. There is a growing consensus, even among those promoting economic liberalization, that some degree of regulation of these processes is desirable and necessary in order to ensure positive social outcomes.

6. The challenge, however, is to find concrete ways in which the goals represented in international human rights law can be concretely supported, rather than undermined, by international economic policy and practice. This must ultimately involve a complete change of culture in the economic policy forums, which presently find human rights principles not to be central or even germane to their mandate, towards acceptance of these principles as a fundamental basis for the formulation of economic policy.

Towards a human rights analysis of major economic policies, practices and institutions

6. A thorough assessment is required of the extent to which, and means by which, human rights (especially economic, social and cultural rights) are currently integrated (or not) in international economic policy formulation and implementation, and identification of ways in which those principles can be more deliberately and centrally located in these processes. Key areas of assessment would be as follows:

(a) A human rights-based assessment of the underlying assumptions that inform the major economic policies. One of these assumptions is that economic policies should be assessed primarily in terms of macroeconomic indicators related to growth rates, inflation, balance-of-payments, exchange rates etc., rather than social and environmental indicators that are a more proximate

measurement of the degree of fulfilment of human rights obligations in the social and economic field. Application of the "precautionary principle" developed in the environmental field would be a desirable innovation in the economic policy arena (i.e. proponents of a particular policy should demonstrate beyond reasonable doubt, before the policy is implemented, that it will not have detrimental impacts on human rights).

(b) An assessment of the degree of integration of human rights obligations in the governance and working arrangements of various economic institutions and arrangements. Following from the implications of (a), this assessment should cover the key multilateral, plurilateral and bilateral economic institutions and arrangements, and should focus on the issues of policy coherence (verifying that economic policies and rules pursued in these institutions are not in conflict with the international human rights regime) and the primacy of human rights (i.e. that in cases of conflict, human rights obligations have primacy over trade and investment rules). A particularly useful statistic would be the proportion, in each institution or arrangement, of voting rights held by member States that have signed and ratified the various human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights.

(c) An assessment of the adverse human rights impacts of the activities of transnational corporations, and of the capacity and responsibility of States to regulate their methods of work and practices in line with international human rights obligations. The work of the Sub-Commission on the effects of the working methods and activities of TNCs on the enjoyment of human rights and on ways of ensuring that the methods and activities of TNCs are in keeping with the economic and social objectives of the countries in which they operate, is providing a valuable platform for consideration of this question.

(d) An assessment of the adverse human rights impacts of the practices of global financial markets pursuant to widely applied financial liberalization policies, and the types of international reform required to ensure that supranational governance in the area of finance is consistent with the collective human rights obligations of States. This is probably the area where the least study has been undertaken from an explicitly human rights perspective, and yet concerns the set of policies that has had the most devastating impact on economic and social rights around the world in recent history.

International trade and human rights

7. Although the constituting documents of the engines of international trade liberalization, such as the World Trade Organization (WTO), invariably pay lip service to the notion that international relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and promoting sustainable development, in practice these objectives receive little specific attention in these mechanisms and agreements. Where social priorities do feature in the key trade-related agreements, they do so only in "side agreements" or

adjunct clauses. This exposes an attitude which is at odds with the now common acknowledgement that trade liberalization is not an end in itself but a tool for the enhancement of human development and well-being.

8. The very limited integration of human rights with trade policy has generally only been by way of negative conditionality. This again betrays a culture in which human rights principles have been relegated to the status of a tool of trade policy, rather than the reverse. For this reason, negative trade conditionalities based upon one country's perception of another country's human rights record is precisely the wrong approach to take in creating a convergence between trade policy and human rights principles. The proper application of a human rights approach would fundamentally change the way trade policy is formulated and applied, and would place human rights at the apex of the process.

9. A detailed study of the extent to which human rights concerns are currently integrated into trade agreements and mechanisms, and the practical effect of those measures, is therefore necessary in order to arrive at recommendations which might adequately address the current tension between trade policy and its effects and the human rights principles which the international community has agreed it is the first responsibility of Governments to promote.

10. Until such a study is undertaken, it would be irresponsible in the extreme for Governments to embark upon a "millennium round" of further trade liberalization negotiations in the face of mounting civil society concerns about the social impacts of trade liberalization.

Transnational corporations and human rights

11. We are following very closely the work of the Sub-Commission in relation to the human rights impacts of the working methods and activities of TNCs. The significant role played by TNCs in the shape and functioning of the global economy, the current lack of effective regulation of their activities and the disastrous impact of TNC operations on many grass-roots communities demand an urgent and comprehensive examination of this issue. Accordingly, we welcome the establishment of the Sub-Commission's working group on TNCs and human rights and the breadth of its mandate.

12. We look forward to concrete initiatives from this working group to identify the human rights violations resulting from inadequately regulated TNC activity, and to propose effective means for ensuring compatibility between the operations of TNCs and the legal frameworks for foreign investment, and existing international human rights obligations and commitments.

Financial and investment liberalization and human rights

13. Recent history contains sharp lessons about the social impacts of financial and investment liberalization. Although studies produced by different arms of the United Nations have begun this process, it is clear that much further work still needs to be done on documenting and analysing such impacts and identifying the implications for future policy reform.

The following are some of the necessary focuses for further study:

(i) An audit of the human rights impact of the global economic crisis triggered in East Asia;

(ii) The role played in the economic crisis by financial liberalization policies pursued in, or imposed on, the countries concerned;

(iii) An overview of new financial and investment liberalization policies currently being pursued in different forums;

(iv) An overview of human rights-consistent alternative arrangements proposed in the context of current debates on reforming the "international financial architecture", including:

The proposal by the Task Force of the United Nations Executive Committee on Economic and Social Affairs that codes of conduct in the area of fiscal, monetary and financial policy be consistent with the provisions of the main United Nations human rights instruments;

The proposal by UNCTAD that current international rules and conditionalities should not prevent national Governments from taking appropriate unilateral measures (such as fiscal penalties or capital controls) to protect their citizens from the devastating consequences of sharp swings in short-term speculative capital flows;

The proposals by a growing number of NGOs that progressive taxation reform (such as the "Tobin tax" on short-term international financial transactions) be addressed internationally, through the United Nations;

(v) A consideration of other future policy directions in the areas of labour standards and social/environmental regulation.

The Multilateral Agreement on Investment (MAI) - implications for human rights

14. Negotiations on the MAI were formally terminated in the OECD in December 1998, due in large measure to the efforts of a remarkable civil society movement against the MAI. France's decision to withdraw from the negotiations (which heralded the demise of the MAI in the OECD) was based on a report commissioned by the Government which highlighted concerns about the "incompatibility" of the draft MAI (and its process of negotiation) with social and environmental commitments. Despite the termination of the negotiations in the OECD, the principles contained in the MAI negotiating text and the process through which it was produced continue to warrant close examination.

15. The objectives expressed in the negotiating text of the MAI are likely to continue to be pursued in other forums (including possibly WTO and IMF) and therefore remain live focuses of concern for human rights, labour, environmental and consumer rights groups. The concrete expression of those

objectives in the negotiating text provides a rare opportunity for pre-emptive analysis from a human rights perspective. Some of the key issues for human rights analysis of the MAI text would include the principles of "standstill" and "rollback" and their implications for the progressive realization of economic, social and cultural rights; the exceedingly broad definition of "investment"; the operation of the "National Treatment" and "Most Favoured Nation" principles in the area of investment; the abolition of "performance requirements" (such as local employment, local content and technology transfer requirements, and restrictions upon profit repatriation); the expropriation and compensation provisions and the dispute resolution procedures (especially relating to investor-to-State dispute resolution).

16. The process by which the MAI was negotiated also provides an important example of the sort of non-transparent and non-participatory processes whereby much of international economic policy is still formulated. As such, it calls for close analysis from a human rights perspective and application of that analysis to other economic policy formulation processes.

Conclusion

17. This policy discussion is a central one for international global governance in the twenty-first century, and the United Nations human rights regime must reassert itself in this discussion in order to ensure that economic policy focuses more on human development than a narrow conception of economic development and that the primary beneficiaries of globalization are people and communities, rather than markets and speculators.

18. Building upon the working paper prepared pursuant to resolution 1998/12, the Sub-Commission should undertake a more detailed study on this matter, with a view to the early establishment of a mandate for a special rapporteur on the primacy of human rights in international economic policy and practice.